

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH

ROGER CAMPBELL,

Plaintiff,

v.

J. WHITEAR, et al.,

Defendants.

**ORDER ADOPTING REPORT AND
RECOMMENDATION**

Case No. 2:21-cv-00421-JNP-CMR

Judge Jill N. Parrish

Magistrate Judge Cecilia M. Romero issued a Report and Recommendation that the court grant in part and deny in part defendants Trent Moulton and Bountiful City's Motion to Dismiss (ECF No. 35) and grant in part and deny in part defendants Jesse Whitear and North Salt Lake City's Motion to Dismiss (ECF No. 37). Judge Romero notified the plaintiff that a failure to file a timely objection to her recommendation could waive any objections to it. No objection was filed within the allotted time.

Because no party objected to the Report and Recommendation, any argument that it was in error has been waived. *See United States v. One Parcel of Real Prop.*, 73 F.3d 1057, 1060 (10th Cir. 1996). The court will decline to apply the waiver rule only if "the interests of justice so dictate." *Moore v. United States*, 950 F.2d 656, 659 (10th Cir. 1991). In determining whether the interests of justice require an exception to the waiver rule, the Tenth Circuit has "considered factors such as 'a *pro se* litigant's effort to comply, the force and plausibility of the explanation for his failure to comply, and the importance of the issues raised.'" *Duffield v. Jackson*, 545 F.3d 1234, 1238 (10th Cir. 2008). In this case, there is no indication that the interests of justice require it to

deviate from the waiver rule. Thus, the court finds that the interests of justice do not warrant deviation from the waiver rule and ADOPTS IN FULL the Report and Recommendation.

Accordingly, the court ORDERS as follows:

1. The Report and Recommendation, ECF No. 53, is ADOPTED IN FULL.
2. The court DENIES IN PART Bountiful City's Motion to Dismiss (ECF No. 35) as to plaintiff's first and second causes of action, and GRANTS plaintiff leave to amend his Fourth Amendment claims.
3. The court DENIES IN PART Bountiful City's Motion to Dismiss and North Salt Lake City's Motion to Dismiss (ECF No. 37) as to plaintiff's third cause of action and GRANTS plaintiff leave to amend his failure to train claim.
4. The court GRANTS IN PART Bountiful City's Motion to Dismiss and North Salt Lake City's Motion to Dismiss and DISMISSES without prejudice plaintiff's fourth cause of action under the Fourteenth Amendment, fifth cause of action for aggravated assault, and Utah Constitution and state law claims.

DATED the 26th day of September, 2023.

BY THE COURT:



JILL N. PARRISH
United States District Judge